

Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

<hr/>)	
<i>In re</i>)	
)	
DETERMINATION OF ROYALTY RATES AND)	Docket No. 21-CRB-0002-PBR
TERMS FOR PERFORMANCE OR DISPLAY OF)	(2023-2027)
NONDRAMATIC MUSICAL WORKS AND)	
PICTORAL, GRAPHIC, AND SCULPTURAL)	
WORKS BY PUBLIC BROADCASTING)	
ENTITIES (PB IV))	
<hr/>)	

**PROPOSAL OF SESAC PERFORMING RIGHTS, LLC
OF RATES AND TERMS FOR COLLEGES AND UNIVERSITIES**

SESAC Performing Rights, LLC (“SESAC”) hereby submits this proposal for statutory license fees to be paid to SESAC by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with National Public Radio, Inc. (“NPR”) (the “non-NPR College Radio Stations”) for the performance of copyrighted musical works in SESAC’s repertory for the five-year period from 2023 through 2027. SESAC proposes a revised version of 37 C.F.R. §381.5, which applies to the performance of copyrighted published nondramatic musical compositions “by noncommercial radio stations which are licensed to colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with NPR.”

SESAC is a performing rights organization that licenses, on a non-exclusive basis in the United States, the public performing rights in more than 1 million non-dramatic musical works in its catalogue on behalf of more than 30,000 affiliated songwriters, composers, and music

publishers, including foreign works through SESAC's reciprocal licensing agreements with foreign performing rights organizations.

BACKGROUND

SESAC's predecessor in interest, SESAC, Inc., participated in numerous public broadcasting rate-setting proceedings through the years pursuant to Section 118 of the Copyright Act. For example, in the Section 118 rate-setting proceedings for the 2008-2012 and the 2013-2017 licensing periods, SESAC, Inc. submitted proposals regarding license rates and terms for non-NPR College Radio Stations jointly along with the American Council On Education ("ACE"), which was representing more than 1,700 colleges and universities, including a majority of colleges and universities operating such non-NPR College Radio Stations; those proposals included a baseline license rate in the first year with annual cost-of-living adjustments in the subsequent four years.

Similarly, in the Section 118 rate-setting proceeding for the current 2018-2022 licensing period, SESAC, Inc. and the National Association of College and University Business Officers ("NACUBO"), which was representing more than 2,100 colleges and universities in the United States (and which was in consultation with ACE), jointly proposed rates and terms for non-NPR College Radio Stations. The joint proposal was for annual cost-of-living adjustments for the five-year period.

On January 5, 2021, the Copyright Royalty Judges published a notice in the above-captioned proceeding to set rates for the five-year license period from January 1, 2023 through December 31, 2027. *See* 86 Fed. Reg. 325. SESAC timely filed a petition to participate in the proceeding. However, no entity or representative of the non-NPR College Radio Stations submitted a petition to participate in the Proceeding.

THE SESAC PROPOSAL

SESAC hereby proposes that the SESAC blanket license fees for the non-NPR College Radio Stations for the five-year period 2023 through 2027 continue the current cost-of-living adjustment approach in 37 C.F.R. §381.5(c)(3) based on the Consumer Price Index (“CPI”), reflecting how adjustments have been calculated under the most recent joint proposal submitted by SESAC and NACUBO and adopted in the current regulation. Appendix A hereto sets out the proposed rates and terms. No other revisions to the text of the governing regulation, *i.e.*, 37 C.F.R. §381.5, are proposed. As noted above, no entity or representative for the non-NPR College Radio Stations submitted a petition to participate in this proceeding. However, SESAC has informed NACUBO of its intent to propose continuing annual cost-of-living rate adjustments based on the CPI. In turn, by email dated July 29, 2021 from Bryan Dickson, NACUBO’s Director of Student Financial Services and Educational Programs to J.D. Connell, SESAC’s Vice President and Counsel for New Media, NACUBO has informed SESAC that it has no objections. Moreover, ACE has voiced no objection to SESAC regarding this proposal.

The Judges have statutory authority “to make determinations and adjustments of reasonable terms and rates of royalty payments” for the Section 118 license pursuant to 17 U.S.C. §801(b)(1). SESAC has no objection to the proposed modifications to 37 C.F.R. §381.5 being printed and made available to the public in the form of a Federal Register notice. The Judges’ adoption of these proposed rates into the regulation would make further activity in this proceeding, including discovery, Written Direct Statements, or hearings, unnecessary for non-NPR College Radio Stations insofar as their performance of SESAC music is concerned.

CONCLUSION

SESAC respectfully requests that the Judges adopt this proposal for a modification of fees to be paid by non-NPR College Radio Stations pursuant to Section 118 of the Copyright Act. SESAC respectfully requests the 37 C.F.R. §381.5 be amended with the new rates set forth in Appendix A of this proposal.

Respectfully submitted,

SESAC PERFORMING RIGHTS, LLC

/s/ Christos Badavas

Christos Badavas (NY Bar No. 2673838)
Executive Vice President and General Counsel
SESAC Performing Rights, LLC
152 West 57th Street
57th Floor
New York, NY 10019

/s/ John C. Beiter

John C. Beiter (TN Bar No.012564)
Beiter Law Firm, PLLC
P.O. Box 120433
Nashville, TN 37212

Dated: September 3, 2021

APPENDIX A

§381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

- (a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to accredited colleges accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with National Public Radio. For purposes of this Section, accreditation of institutions providing post-secondary education shall be determined by a regional or national accrediting agency recognized by the Council for Higher Education Accreditation or the United States Department of Education; and accreditation of institutions providing elementary or secondary education shall be as recognized by the applicable state licensing authority.
- (b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges universities and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performance by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.
- (c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:
 - (1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows: ***
 - (2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows: ***
 - (3) For all such compositions in the repertory of SEAC, the royalty rates shall be as follows:
 - (i) 2023: The 2022 rate, subject to the annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.
 - (ii) 2024: The 2023 rate, subject to the annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.
 - (iii) 2025: The 2024 rate, subject to the annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

- (iv) 2026: The 2025 rate, subject to the annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.
 - (v) 2027: The 2026 rate, subject to the annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.
 - (vi) Such cost-of-living adjustment to be made in accordance with the greater of:
 - (A) The change if any, in the Consumer Price Index (all consumers, all items) published by the U.S. Department of Labor, Bureau of Labor Statistics during the twelve (12) month period from the most recent Index, published before December 1 of the year immediately prior to the applicable year; or
 - (B) One and one-half percent (1.5%).
- (4) For the performance of any other such compositions: \$1.
- (d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to *** SESAC not later than January 31 of each year. Each annual payment to *** SESAC shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the effective radiated power (ERP) as specified in its current FCC license. An exact copy of such declaration shall be furnished to *** SESAC.
- (e) *Records of use.* A public broadcasting entity subject to this section shall furnish to *** SESAC, upon request, a music-use report during one week of each calendar year. *** SEAC shall not in any one calendar year request more than 10 stations to furnish such reports.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 2021, a copy of the foregoing Proposal of SESAC Performing Rights, LLC of Rates and Terms for Colleges and Universities was filed electronically using eCRB, which will automatically provide electronic service copies to all counsel and pro se participants who are registered to use eCRB. See 37 C.F.R. §303.6(h)(1).

/s/ John C. Beiter
John C. Beiter

Proof of Delivery

I hereby certify that on September 3, 2021, I provided a true and correct copy of the Proposal of SESAC Performing Rights, LLC on Rates and Terms for Colleges and Universities to the following:

Broadcast Music, Inc., represented by Jennifer T. Criss, served via ESERVICE at Jennifer.criss@gaegredrinker.com

Public Broadcasting Entities, represented by David P Mattern, served via ESERVICE at dmattern@kslaw.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

American Society of Composers, Authors and Publishers, represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via ESERVICE at ablin@fhhlaw.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at scott@oandzlaw.com

Educational Media Foundation, represented by David Oxenford, served via ESERVICE at doxenford@wbklaw.com

The Harry Fox Agency LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Church Music Publishers' Association, Inc., represented by Carroll C Rigler, served via ESERVICE at cheshirerigler@shrumhicks.com

Signed: /s/ John C. Beiter

Proof of Delivery

I hereby certify that on Friday, September 03, 2021, I provided a true and correct copy of the Proposal of SESAC Performing Rights, LLC of Rates and Terms for Colleges and Universities to the following:

Public Broadcasting Entities, represented by David P Mattern, served via ESERVICE at dmattern@kslaw.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at scott@oandzlaw.com

Church Music Publishers' Association, Inc., represented by Carroll C Rigler, served via ESERVICE at cheshirerigler@shrumhicks.com

American Society of Composers, Authors and Publishers, represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

Educational Media Foundation, represented by David Oxenford, served via ESERVICE at doxenford@wbklaw.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

The Harry Fox Agency LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Broadcast Music, Inc., represented by Jennifer T. Criss, served via ESERVICE at jennifer.criss@faegredrinker.com

National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via ESERVICE at ablin@fhhlaw.com

Signed: /s/ John C. Beiter